



26 MAR 2007

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JACQUELINE E. HARTT, PH.D
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
P.O. BOX 3791
ORLANDO FL 32802-3791

In re Application of LONG et al.	:
Application No.: 10/595,443	: DECISION ON PETITION
PCT No.: PCT/AU04/01451	:
Int. Filing: 22 October 2004	: UNDER 37 CFR 1.47(a)
Priority Date: 22 October 2003	:
Attorney Docket No.: 0090243	:
For: QUALITATIVE DATA ANALYSIS	:
SYSTEM AND METHOD	:

This is a decision on applicant's petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 12 December 2006, to accept the application without the signatures of joint inventors, Linda Godfrey and Kerry Leigh Hicks.

BACKGROUND

On 20 April 2006, applicant filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 12 October 2006, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) was required.

On 12 December 2006, applicant filed the instant petition along with a declaration, executed by the joint inventors on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signatures of inventors Linda Godfrey and Kerry Leigh Hicks alleging that Ms Godfrey and Ms. Hicks are unavailable to sign the application.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application

or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

The petition included authorization to charge the requisite petition fee to applicant's deposit account, satisfying Item (1). With regard to item (4), the declaration executed by the available joint inventors on their behalf and on behalf of the non-signing inventors was submitted and satisfies the requirements of 37 CFR 1.47(a).

With respect to Item (2) above, Petitioner provided the declaration of Martin Gerard Earley in support of the petition under 37 CFR 1.47(a). Mr. Gerard states that he was advised by the applicant company that the nonsigning inventors no longer are employed there and no contact details are available.

As indicated in the MPEP Section 409.03(d), where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made. The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions.

Here, Petitioner did not demonstrate what "diligent efforts" were undertaken to locate the nonsigning inventors to obtain their signatures on the declaration. No further efforts to locate the nonsigning inventors were attempted and detailed in a first hand statement of facts. A statement by the person with first hand knowledge, which fully describes the exact facts relied on to establish that a diligent effort was made, is required. The diligent efforts to locate the nonsigning inventors were not pursued and documented such as Internet searches, contact with the joint inventors to obtain the nonsigning inventors' current address, current email address and/or current employer. No attempt to reach the nonsigning inventors by telephone was made. No request from the Postal Service for their forwarding address was made.

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a "diligent effort" was made. Petitioner's statement of facts under 37 CFR 1.47(a) does not indicate that any search for the nonsigning inventors' new address was made. Since no attempts to locate the inventors were documented, it can not be concluded that "a diligent effort" was made to locate the non-signing inventors.

The action taken by petitioner is not sufficient to prove that "a diligent effort" was made to contact the nonsigning inventors. Under these circumstances, it cannot be concluded that then nonsigning inventors are unavailable to sign the application.

Item (3) is not satisfied because the last known addresses of non-signing inventors were not provided.

In sum, Petitioner has satisfied Items (1) and (4) above. Petitioner has not satisfied Item (2) by demonstrating: (1) a *bona fide* attempt was made to present a copy of the application papers for U.S. application 10/595,443 (specification, including claims, drawings, and declaration) to the nonsigning inventors for their signature and their refusal to sign these documents and (2) that "a diligent effort" was made to contact or locate the nonsigning inventors. Accordingly, it is inappropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

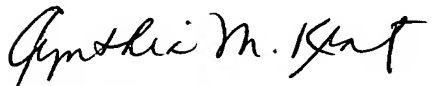
For the reasons set forth above, the evidence submitted does not support a finding that the nonsigning inventor refuses to sign the application at this time. Accordingly, it is inappropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

The petition under 37 CFR §1.47(a) is **DISMISSED WITHOUT PREJUDICE**.

Any reconsideration on the merits of the petition under 37 CFR §1.47(a) must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR §1.47(a)." No petition fee is required. Any further extensions of time available may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile (571) 272-0459

03/26/2007 SBASHEIR 00000002 010404 10595443
Sale Ref: 00000002 DAI: 010404 10595443
01 FC:1463 200.00 DA